

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
TENNESSEE

MIKE AND LEONIE<sup>1</sup> HEFLEY

Plaintiff

v.

No.: 1:24-cv-01156-STA-jay

ACUITY, A MUTUAL INSURANCE COMPANY,  
ET AL

Defendants

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**FIRST AMENDED COMPLAINT FOR  
BREACH OF CONTRACT AND PUNITIVE DAMAGES  
JURY DEMAND**

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Comes now, Plaintiffs, by and through their counsel, and files this their First Amended Complaint pursuant to the scheduling order against ACUITY FOR BREACH OF CONTRACT AND PUNITIVE DAMAGES, and in support thereof states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. MIKE AND LEONIE HEFLEY are adult resident citizens of the State of Tennessee who own and reside the property municipally known as 185 Forest Lake Drive Humboldt, Tennessee 38343 (“property”). Plaintiffs are the named insureds on the policy referenced below that provided coverage for the property.
2. Acuity (“Acuity”) is a mutual insurance corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 200 South Taylor Drive

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<sup>1</sup> Plaintiff counsel misspoke at the scheduling conference and has since verified that this is the correct spelling of Plaintiffs name.

Sheboygan, WI<sup>2</sup> 53082. Acuity may be served with process by any means authorized by Rule 5 of the Federal Rules of Civil Procedure or the Commissioner of Insurance.

**FACTS:**

3. Defendant issued Policy No. VJ7036-D(“Policy”) to Plaintiffs providing coverage for wind and hail damage that was in effect at the insured premises on or about May 2, 2022, assigned Claim No. RT 7087. Defendant already has a copy of the operative policy thus there is no need to attach same to the complaint. A copy of an excerpt of the policy is attached as DE 1-1, Page ID 26-29.
4. Wind and Hail is a covered peril and Defendant admits that these losses are a covered peril under the operative policy.
5. On or about May 2, 2022 wind and hail damaged the Plaintiffs insured premises.
6. Acuity’s adjuster completed and estimate of damages, DE 1-1 Page ID 34-42, and the Plaintiff’s adjuster completed and estimate, DE 1-1 Page ID 42-96.
7. The competing estimates varied as to scope of repairs and amount of repairs and the Plaintiffs demanded appraisal, DE 1-1, Page ID 30, and completed the proof of loss, DE 1-1, Page ID 31-32.
8. Plaintiffs have completed all precedent including payment of demanded payment and the Acuity has refused to pay or to submit the claim to appraisal as required by the terms of the operative policy. DE 1-1, Page ID 26-29.

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<sup>2</sup> This Court has subject matter jurisdiction of this action pursuant to 28 USC § 1332 (Diversity). Venue is proper in this district as a substantial part of the events giving rise to the claim occurred in this district and the property is located in this district pursuant to 28 USC § 1391.

COUNT I.

BREACH OF CONTRACT

6. The Plaintiff incorporates the foregoing allegations as if fully set forth herein.

7. Defendant materially breached the insurance contract by refusing to pay the damages to the property caused by wind and hail, after proper demand by Plaintiff.

8. Defendant materially breached the insurance contract by refusing to enter into the appraisal process after proper demand for appraisal.

PUNITIVE DAMAGES

9. The Plaintiff incorporates the foregoing allegations as if fully set forth herein.

10. Defendants' conduct was reckless, in attempting to damage the Plaintiffs claims by the in failing to pay for the damages to Plaintiffs premises as a result of the wind and hail, entitles Plaintiff to an award of punitive damages.

COUNT II.

COMPEL APPRAISAL

11. The Plaintiff incorporates the foregoing allegations as if fully set forth herein.

12. Plaintiff demand appraisal pursuant to the previous demand for appraisal to resolve the damages element of this claim and the scope of repairs. The operative appraisal clause is set forth in DE 1-1 Page ID 28.

WHEREFORE PREMISES CONSIDERED, Plaintiff requests the court to empanel a jury and award pre-judgment interest, post-judgment interest, compensatory

damages of no less than FIVE HUNDRED THOUSAND AND punitive damages of no less than ONE MILLION DOLLARS.

Respectfully submitted,

/s/Drayton D. Berkley  
Drayton D. Berkley, Esq.  
Berkley Law Firm, PLLC  
[attorneyberkley@gmail.com](mailto:attorneyberkley@gmail.com)  
*Attorney for Plaintiff*  
P.O. Box 771048  
Memphis, TN 38177

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, do hereby certify that the foregoing document has been served upon the following counsel of record or parties pro se in this cause **ONLY BY ELECTRONIC TRANSMISSION** to the following:

PARKS T. CHASTAIN  
HANNAH LIEFEL  
BREWER, KRAUSE, BROOKS, CHASTAIN & MEISNER, PLLC  
545 Mainstream Drive, Suite 101  
Nashville, TN 37228  
Acuity, A Mutual Insurance Company and Brad Cookson

This, the 16th day of December 2024

/s/Drayton D. Berkley  
Drayton D. Berkley